

REMARKS

Claims 1-20 are pending in this application. For purposes of expedition, claims 1-14 have been amended in several particulars for purposes of clarity and brevity that are unrelated to patentability and prior art rejections while claims 15-20 have been newly added in accordance with current Office policy, to further and alternatively define Applicants' disclosed invention and to assist the Examiner to expedite compact prosecution of the instant application.

Claim 6 has been objected to because of a typographical error as listed on page 2 of the Office Action. In response thereto, claim 6 has been amended to overcome the objection.

Claim 8 has been rejected under 35 U.S.C. §112, 2d ¶, as being indefinite. Specifically, the Examiner asserts that claim 8 fails to provide antecedent basis for the phrase "the bactericide-impregnated membrane" and show how the elements cooperate with the elements of claims 1, 2 or 5. In response thereto, claim 8 has been amended to overcome the rejection.

Claims 1-3, 9, 10, 13 and 14 have been rejected under 35 U.S.C. §102(b) as being anticipated by Masao et al., JP 58-155087 for reasons stated on pages 3-4 of the Office Action. While Applicants disagree with the Examiner's characterization of Masao '087 as Masao '087 only discloses a cell culture device, shown in FIG. 1, which has a closed chamber to keep the cell culture in a controlled atmosphere, base claim 1 has been amended to clearly distinguish over Masao '087. For example, base claim 1, as amended, defines a closed-type cell culture device which avoids contamination of cultured cells but still allows operations such as, in particular, uniform seeding of cells in the incubator. Specifically, the incubator is defined as being "substantially circular with its circular center being offset from a rotational axis of the driving means [for rotationally moving the incubator]. As described in connection with FIG. 8, and paragraph [0074] of Applicants' specification, this arrangement advantageously allows for a shuffling motion of the incubator to result in uniform seeding of the cells to be cultured. At the same time, the arrangement is compact and efficient and can be easily incorporated into the closed space within the closed-type cell culture device where it can be operated automatically without requiring special access to the incubator which might contaminate the cell culture. This feature as expressly defined in Applicants' base claim 1, among others, is not disclosed or suggested by Masao '087, or any other cited prior art of record.

The rule under 35 U.S.C. §102 is well settled that anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. *In re*

Paulsen, 30 F.3d 1475, 31 USPQ2d 1671 (Fed. Cir. 1994); *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). Those elements must either be inherent or disclosed expressly and must be arranged as in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989); *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 7 USPQ2d 1057 (Fed. Cir. 1988); *Verdegall Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 2 USPQ2d 1051 (Fed. Cir. 1987). In addition, the prior art reference must be enabling. *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987). The corollary of that rule is that absence from the reference of any claimed element negates anticipation. *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ2d 81 (Fed. Cir. 1986).

The burden of establishing a basis for denying patentability of a claimed invention rests upon the Examiner. The limitations required by the claims cannot be ignored. See *In re Wilson*, 424 F.2d 1382, 165 USPQ 494 (CCPA 1970). All claim limitations, including those which are functional, must be considered. See *In re Oelrich*, 666 F.2d 578, 212 USPQ 323 (CCPA 1981). Hence, all words in a claim must be considered in deciding the patentability of that claim against the prior art. Each word in a claim must be given its proper meaning, as construed by a person skilled in the art. Where required to determine the scope of a recited term, the disclosure may be used. See *In re Barr*, 444 F.2d 588, 170 USPQ 330 (CCPA 1971).

In the present situation, Masao '087 fails to disclose and suggest features of Applicants' base claim 1, and features of its dependent claims 2-3, 9, 10, 13 and 14. As such, Applicants respectfully request that the rejection of claims 1-3, 9, 10, 13 and 14 be withdrawn.

Claim 4 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Masao et al., JP 58-155087 in view of Buterbaugh, U.S. Patent No. 3,649,463 for reasons stated on page 5 of the Office Action. Claims 5-7 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Masao et al., JP 58-155087 in view of Bisconte, U.S. Patent No. 4,800,164 for reasons stated on pages 5-6 of the Office Action. Claim 8 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Masao et al., JP 58-155087 in view of Vaillancourt, U.S. Patent No. 5,637,107 for reasons stated on pages 6-7 of the Office Action. Lastly, dependent claims 11 and 12 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Masao et al., JP 58-155087 in view of Cannon et al., U.S. Patent No. 7,270,996 for reasons stated on pages 7-8 of the Office Action. However, since these rejections are predicated upon the correctness of the rejection of Applicants' base claim 1, Applicants respectfully traverse for

the same reasons as discussed.

Claims 15-20 have been newly added to alternatively define Applicants' disclosed invention over the prior art of record. These claims are believed to be allowable at least for the same reasons discussed against all the outstanding rejections of the instant application. No fee is incurred by the addition of claims 15-20.

In view of the foregoing amendments, arguments and remarks, all claims are deemed to be allowable and this application is believed to be in condition to be passed to issue. Should any questions remain unresolved, the Examiner is requested to telephone Applicants' attorney at the Arlington, VA office at (703) 312-6697. Applicants respectfully reserve all rights to file subsequent related application(s) (including reissue applications) directed to any or all previously claimed limitations/features which have been amended or canceled, or to any or all limitations/features not yet claimed, i.e., Applicants have no intention or desire to dedicate or surrender any limitations/features of the disclosed invention to the public.

To the extent necessary, Applicants petition for an extension of time under 37 CFR §1.136. If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 01-2135.

Respectfully submitted,

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12/11/09

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